

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

----- X
DAVID AGOADO, LEEANN MCNALLY, CRAIG
MOORE, CHRIS PIERRE, THOMAS SHARKEY,
MADGE SHIPMAN, and DOREEN VAZQUEZ
individually and on behalf of all other similarly situated,

Case No. 2:14-cv-00018-JMA-AKT

Plaintiffs,

-against-

MIDLAND FUNDING, LLC d/b/a as MIDLAND
FUNDING OF DELAWARE, LLC, and MIDLAND
CREDIT MANAGEMENT, INC., RUBIN &
ROTHMAN, LLC, FORSTER & GARBUS LLP,
COHEN & SLAMOWITZ, LLP, PRESSLER &
PRESSLER LLP,

**AFFIRMATION OF JOSEPH L.
FRANCOEUR IN OPPOSITION OF
PLAINTIFFS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendants.

----- X

Joseph L. Francoeur, an attorney duly admitted to practice law in the courts of the State
of New York, affirms the following under penalties of perjury:

1. I am a member of the law firm of Wilson, Elser, Moskowitz, Edelman & Dicker,
LLP, attorneys for the Defendant COHEN & SLAMOWITZ, LLP and I am fully familiar with the
facts and circumstances of the within action by virtue of my review of the file maintained by this
office.

2. Annexed hereto as Exhibit **A** is a true and accurate copy of Midland's Notice of
New Ownership and Pre-Legal Review, bates stamped as S&S000038-39.

3. Annexed hereto as Exhibit **B** is a true and accurate copy of Midland's Kayla Haag's
Affidavit in Support of Plaintiff's Motion for Default Judgment, bates stamped as S&S000125-

127

4. Annexed hereto as Exhibit **C** is a true and accurate copy of the deposition transcript of David Cohen in this action

5. Annexed hereto as Exhibit **D** is a true and accurate copy of the deposition transcript of Xenia Murphy in this action,

6. Annexed hereto as Exhibit **E** is a true and accurate copy of the deposition transcript of Mitchell Selip in this action.

7. Annexed hereto as Exhibit **F** is a true and accurate copy of the deposition transcript of David Agoado in this action.

8. Annexed hereto as Exhibit **G** is a true and accurate copy of the Chase Bank Account Statements attributed to Plaintiff David Agoado, bates stamped S&S000042-81.

9. Annexed hereto as Exhibit **H** is a true and accurate copy of chain of title for the Chase Bank Account attributed to Plaintiff David Agoado, including the Bill of Sale, Closing Statement, and Affidavit of Sale of Account by the Original Creditor, bates stamped S&S000002-04.

10. Annedex hereto as Exhibit **I** is a true and accurate copy of the chain of title for the Household Account attributed to Plaintiff David Agoado, including the including the Affidavit of Bulk Sale of Accounts with a Certificate of Conformity, the Assignment and Bill of Sale, the Closing Statement, the Account Schedule, and the Affidavit of Sale of Individual Account for the Household Account, bates stamped S&S000083-97.

11. Annexed hereto as **Exhibit J** is a true an accurate copy of Chase Bank Card Member Agreements and Notices of Changes to the Card Member Agreements attributed to Plaintiff David Agoado, bates stamped S&S000005-6, S&S000008-35.

12. Annexed hereto as **Exhibit K** is a true and accurate copy of the Charge-off Statement for the Chase Bank Account attributed to Plaintiff David Agoado, bates stamped S&S000068-69

13. Annexed hereto as **Exhibit L** is a true and accurate copy of the Defendant's Field Data Sheet for the Chase Bank Account attributed to Plaintiff David Agoado, bates stamped S&S000041.

14. Annexed hereto as **Exhibit M** is a true and accurate copy of Defendant's Field Data Sheet for the Household Account attributed to Plaintiff David Agoado, bates stamped S&S000091.

15. Annexed hereto as **Exhibit N** is a true and accurate copy of the Personal Credit Line Account Agreement on the Household Account attributed to Plaintiff David Agoado, bates stamped S&S000102-06, S&S000098-101.

16. Annexed hereto as **Exhibit O** is a true and accurate copy of David Cohen's affidavit.

FOR THE REASONS set forth in Defendants' memorandum of law, there is simply no basis for Plaintiffs' claims and therefore Plaintiffs are not entitled to summary judgment.

WHEREFORE, Defendant COHEN & SLAMOWITZ, LLP, respectfully requests that this Court grant its Motion for Summary Judgment, as well as any such other and further relief as the Court may deem just and proper.

Dated: January 14, 2022
New York, New York

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: /s/ Joseph Francoeur
Joseph L. Francoeur
Attorneys for Defendant
COHEN & SLAMOWITZ, LLP
150 East 42nd Street
New York, New York 10017-5639
Tel.: (212) 490-3000
File No.: 11471.00008
Joseph.francoeur@wilsonelser.com